Supreme Court, U.S.
FILED
APR 2 2001
CLERK

No. 00-1374

In The

Supreme Court of the United States

EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION, a nonprofit California corporation, et al.,

Petitioners,

v.

THE STATE OF CALIFORNIA,

Respondent.

On Petition For Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

State statutes give religiously-affiliated organizations the ability to exempt their noncommercial property from otherwise applicable local historic preservation ordinances upon a showing of substantial hardship that will impair achievement of their religious mission. Did the California Supreme Court correctly apply United States Supreme Court precedent in determining that the statutes do not violate the Establishment Clause of the United States Constitution?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 5

REASONS FOR DENYING THE WRIT 7

I. CERTIORARI IS NOT NEEDED BECAUSE THE DECISION BELOW IS IN ACCORD WITH THIS COURT'S DECISIONS IN *LEMON, AMOS* AND *SMITH* AND DOES NOT CONFLICT WITH THIS COURT'S DECISIONS IN *LARKIN* AND *KIRYAS JOEL* 7

A. The Decision Below Does Not Alter the Standards Set by This Court for Reviewing Legislation That Exempts Only Religious Organizations From Generally Applicable Law 7

1. A Religious Exemption Has a Secular Purpose Under the First Prong of the *Lemon* Test If a *Potential* Free Exercise Violation Is Present 8

2. A Religious Exemption Passes the Second Prong of the *Lemon* Test Even If Its Benefits Are Extended Only to Religious Entities 11

B. The Decision Below Does Not Conflict With This Court's Decisions in *Larkin* and *Kiryas Joel* 14

TABLE OF CONTENTS – Continued

Page

C. This Court Has Already Denied Petitions for Writ of Certiorari in Two Very Similar Religious Exemption Cases..... 16

II. CERTIORARI IS NOT NEEDED BECAUSE THERE IS NO CONFLICT IN THE CIRCUITS OR WITH OTHER STATE COURTS OF LAST RESORT AS TO WHETHER A LAND-USE STATUTE EXEMPTING RELIGIOUSLY-AFFILIATED ORGANIZATIONS VIOLATES THE FEDERAL ESTABLISHMENT CLAUSE 16

III. CERTIORARI IS NOT NEEDED TO OBTAIN THIS COURT'S DIRECTION BEFORE OTHER STATES FOLLOW AB 133 AS A MODEL FOR EXEMPTING RELIGIOUS ORGANIZATIONS FROM ANY FORM OF LAND USE REGULATION..... 17

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES:

Board of Educ. Of Kiryas Joel Village Sch. Dist. v. Grumet, 512 U.S. 687 (1996) 4, 7, 14, 15

Bowen v. Kendrick, 487 U.S. 589 (1988) 2

Bowen v. Roy, 476 U.S. 693 (1986) 10

Boyajian v. Gatzunis, 212 F.3d 1 (1st Cir. 2000) 4, 16, 17

Children's Healthcare is a Legal Duty v. Min de Parle, 212 F.3d 1084 (8th Cir. 2000) 4, 5

City of Boerne v. Flores, 521 U.S. 507 (1997) 12

Cohen v. City of Des Plaines, 8 F.3d 484 (7th Cir. 1993) 17

Committee for Public Ed. & Religious Lib. v. Nyquist, 413 U.S. 756 (1973) 3

Corporation of Presiding Bishop v. Amos, 483 U.S. 327 (1987) ..... *passim*

Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872 (1990) 3, 4, 7, 10

First Covenant Church of Seattle v. City of Seattle, 120 Wash.2d 238, 840 P.2d 174 (Supr. Ct. of Wash. 1992) 9

First United Methodist v. Hearing Examiner, 129 Wash. 21, 916 P.2d 374 (Supr. Ct. of Wash., en banc, 1996) 10

Frisby v. Schultz, 487 U.S. 474 (1988) 15

Gillette v. United States, 401 U.S. 437 (1970) 12

TABLE OF AUTHORITIES – Continued

Page

Jimmy Swaggart Ministries v. Board of Equalization, 493 U.S. 378 (1988) 12

Keeler v. Mayor & City Council of Cumberland, 940 F.Supp. 879 (D. Md. 1996) 10

Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982) 4, 7, 14, 15

Lemon v. Kurtzman, 403 U.S. 602 (1971) 2, 3, 6, 7, 11, 13

Munns v. Martin, 631 Wash.2d 192, 930 P.2d 318 (Supr. Ct. of Wash., en banc 1997) 10

Renzi v. Connelly School of Holy Child, Inc., 224 F.3d 283 (4th Cir. 2000) 4, 5, 16, 17

Sands v. Morongo Unified School Dist., 53 Cal.3d 863 (1991), *cert. denied*, 505 U.S. 1218 (1991) 2

Society of Jesus of New England v. Boston Landmarks Commission, 409 Mass. 38, 564 N.E.2d 571 (Supr. Jud. Ct. of Mass. 1990) 9

Texas Monthly v. Bullock, 489 U.S. 1 (1988).....8, 13

United States v. Lee, 455 U.S. 252 (1982) 11

Walz v. Tax Comm'n, 397 U.S. 664 (1970).....9, 10, 13

CONSTITUTIONAL PROVISIONS:

U.S. Constitution:

Establishment Clause ..... *passim*

First Amendment 2, 5

Fourteenth Amendment 2

Free Exercise Clause 10, 11, 14

TABLE OF AUTHORITIES – Continued

Page

Free Speech Clause 14

Takings Clause 14

STATUTES:

7 U.S.C. § 1906 12

8 U.S.C. § 1448 12

10 U.S.C. § 312 12

26 U.S.C. § 3127 11

29 U.S.C. § 169 12

42 U.S.C. § 2000e et seq (Title VII of the Civil Rights Act of 1964) 7

42 U.S.C. § 2000e-1 3

1993 Cal. Stat., ch. 419 § 7 6

1994 Cal. Stat., ch. 1199 § 3 ..... 1, 6

Government Code § 25373 ..... 1, 8

§ 25373(e) 15

§ 37361 ..... 1, 8

§ 37361(e) 15

RULE:

Sup. Ct. R. 10 3

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES:

A. Weinstein, *The Myth of Ministry vs. Mortar: A Legal and Policy Analysis of Landmark Designation of Religious Institutions*, 65 Temp. L. Rev. 91, 157 (Spring 1992) 10

Assembly Bill 133 ..... *passim*

BRIEF IN OPPOSITION

The State of California respectfully requests that this Court deny the petition for writ of certiorari in this case. The petition seeks review of the California Supreme Court's well-reasoned decision holding that state laws which allow religiously-affiliated organizations to exempt their non-commercial property from local historic preservation ordinances under certain circumstances do not violate the Establishment Clause of the United States Constitution.[1] Petitioners have failed to satisfy any of this Court's grounds for granting a petition for writ of certiorari. The California Supreme Court correctly applied this Court's precedent to the California statutes at issue, and there is no conflict in the circuits or with another state court of last resort on the question presented.

This case presents a facial constitutional challenge brought by Petitioners against Assembly Bill 133.[2] AB 133 amended California Government Code sections 25373 and 37361, which address historic preservation ordinances.[3] These uniquely-worded statutes provide a mechanism for religiously-affiliated organizations to exempt

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[1] That opinion is reported at 24 Cal.4th 693, 12 P.3d 1122 (2000).

[2] 1994 Cal. Stat., ch. 1199.

[3] The statutes also address ordinances protecting places, sites, buildings, structures, works of art and other objects having a special character or aesthetic interest or value. Respondent for ease of reference will use the terms historic preservation ordinance to describe these ordinances as well.

their noncommercial property from a local historic preservation ordinance if, in the furtherance of their religious mission, they would suffer a substantial hardship likely to deprive them of the economic return on their property, the reasonable use of their property, or the appropriate use of their property.

The California Supreme Court correctly determined that Petitioners had not carried their burden of showing that there were no circumstances under which the statutes could be found constitutional.[4] The Court held that AB 133 does not violate the Establishment Clause[5] of the United States Constitution[6] under the test that this Court

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[4] Petitioners complain that the Court measured the facial challenge to AB 133 under a standard used in state court cases not involving the federal Establishment Clause. The Court below used the test set forth by this Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), in determining whether AB 133 was facially invalid under the federal Establishment Clause, a test determined to be the correct one by this Court in *Bowen v. Kendrick*, 487 U.S. 589, 602 (1988).

[5] Other state constitutional challenges were made as well, but only the federal Establishment Clause ruling is the subject of the petition for writ of certiorari. However, it is another sign that this Court should not grant the petition in this case that Petitioners lost below in their challenge to AB 133 under the California constitutional no preference clause, which the California Supreme Court has held is *more protective* of the principle of the separation of church and state than the federal Establishment Clause. *Sands v. Morongo Unified School Dist.*, 53 Cal.3d 863, 883 (1991), *cert. denied*, 505 U.S. 1218 (1991).

[6] The relevant portion of the First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . . " The First Amendment is binding on the states through the Fourteenth

set forth in *Lemon*, which was applied in a remarkably analogous decision in *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987).[7] The California Supreme Court held that AB 133 passed the *Lemon* test because it had the secular purpose of removing a potential free exercise burden on religiously-affiliated organizations caused by governmentally imposed interference with the ability of those organizations to carry out their religious missions, and it effectuated a more complete separation of church and state.

The California Supreme Court plowed no new ground in upholding the constitutionality of AB 133. Instead, its analysis is supported by a long line of this Court's precedents, including *Lemon* and *Amos*. At most, Petitioners disagree with the California Supreme Court's application of the test set forth by this Court in *Lemon*, as applied in *Amos*. Such disagreement does not warrant granting a petition for writ of certiorari. *See* Sup. Ct. R. 10.

Indeed, AB 133 was enacted by the California Legislature in response to this Court's decision in *Employment Div., Dep't of Human Resources v. Smith*, 494 U.S. 872

Amendment. *Committee for Public Ed. & Religious Lib. v. Nyquist*, 413 U.S. 756, 760, n. 3 (1973).

[7] *Amos* held that the blanket exemption contained in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-1, which exempts religiously-affiliated organizations from the religious discrimination provisions of Title VII, does not violate the Establishment Clause.

(1990).[8] AB 133 is no different than the numerous religious exemptions contained in federal statutes that accommodate religiously-affiliated organizations without providing a package of similar benefits for secular organizations. Nor does the decision upholding AB 133 conflict with this Court's decisions in *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982), or *Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687 (1996).

There is no need for this Court to grant the petition for writ of certiorari in this case, particularly since it recently denied two similar petitions in cases where lower courts found no Establishment Clause violations.[9]

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[8] See discussion of *Smith* in the decision below, *East Bay, supra*, 24 Cal.4th at 711-712.

[9] This Court denied a petition that sought review of *Boyajian v. Gatzunis* 212 F.3d 1 (1st Cir. 2000), in which the First Circuit Court of Appeals held that a state law and a town by-law prohibiting municipal authorities from excluding religious uses of property from any zoning area did not violate the Establishment Clause. *Boyajian v. Gatzunis*, ___ U.S. ___, 121 S.Ct. 759 (Jan. 8, 2001, No. 00-452.) Subsequently, this Court denied a petition for writ of certiorari after the decision in *Renzi v. Connelly School of Holy Child, Inc.* 224 F.3d 283 (4th Cir. 2000). In this case, the Fourth Circuit Court of Appeals held that a county zoning ordinance that exempted parochial schools located on land owned or leased by a church from a requirement to obtain a special exception from local land use laws did not violate the Establishment Clause. *Renzi v. Connelly School of the Holy Child, Inc.*, ___ U.S. ___, 121 S.Ct. 1192 (Feb. 26, 2001, No. 00-1118.) The Court has not yet acted on a third petition for writ of certiorari involving a religious legislative exemption, *Children's Healthcare is a Legal Duty v. Min de Parle*, 212 F.3d 1084 (8th Cir. 2000). This petition challenges, under the Establishment Clause, the provisions in the Medicare and Medicaid acts that permit persons who hold religious objections

One of these cases, *Renzi*, was specifically relied upon by the California Supreme Court in its decision below. *East Bay, supra*, 24 Cal.4th at 717-718. Moreover, there is no conflict in the circuits on this Establishment Clause issue, another reason to deny the petition for writ of certiorari.

Finally, there is no need to grant the petition for writ of certiorari to prevent AB 133 from being used as a model for religious exemptions from land use statutes which could potentially burden the free exercise rights of religiously-affiliated organizations. Indeed, because it does not violate the Establishment Clause, AB 133 is a good model for such legislative exemptions.

STATEMENT OF THE CASE

The decision of the California Supreme Court presents issues arising under the Establishment Clause of the First Amendment to the United States Constitution. In its decision, the Court held that AB 133, a state law granting religiously-affiliated organizations the authority to declare their noncommercial property exempt from historic preservation laws, did not on its face violate the Establishment Clause. AB 133 has the effect of granting an exemption from historic preservation laws to noncommercial property owned by religious organizations under the following circumstances: the owner must object to

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to medical care to receive government assistance for nonmedical care rendered at religious nonmedical health care institutions for which there is no medically-based supervision. *Children's Healthcare is a Legal Duty v. Min de Parle*, No. 00-914, filed Nov. 27, 2000.

landmark designation and determine in a public forum 1) that it will suffer substantial hardship in carrying out its religious mission because the restrictions accompanying landmark status will deprive it of the economic benefit it would otherwise receive from the property when that benefit is necessary to carry out the owner's religious mission, 2) that the restrictions will deprive it of the reasonable use of the property to carry out its religious mission, or 3) that the restrictions will deprive it of a use of its property which is appropriate to carrying out its religious mission. The Legislature, in enacting AB 133, noted that historic preservation restrictions were not related to nor compelled by public health or safety concerns, and stated that the act would "ensure the protection of religious freedom guaranteed by . . . the First Amendment to the United States Constitution." 1993 Cal. Stat., ch. 419, § 7, p. 2388; 1994 Cal. Stat., ch. 1199, § 3.

The California Supreme Court used the test set forth by this Court in *Lemon*, as applied to a similar set of facts in *Amos*, in concluding that AB 133 does not violate the federal Establishment Clause. It concluded that AB 133 1) has the secular purpose of removing a potential free exercise burden on religiously-affiliated organizations, 2) does not impermissibly endorse religion simply by permitting the religious organization to continue using its property in the manner it would have done but for the historic landmark designation, and 3) does not excessively entangle the State with religion because the State provides no aid other than leaving noncommercial properties owned by religious entities alone if the owner seeks an exemption.

REASONS FOR DENYING THE WRIT

I.

CERTIORARI IS NOT NEEDED BECAUSE THE DECISION BELOW IS IN ACCORD WITH THIS COURT'S DECISIONS IN *LEMON, AMOS* AND *SMITH* AND DOES NOT CONFLICT WITH THIS COURT'S DECISIONS IN *LARKIN* AND *KIRYAS JOEL.*

A. The Decision Below Does Not Alter the Standards Set by This Court for Reviewing Legislation That Exempts Only Religious Organizations From Generally Applicable Law.

This Court should not grant the petition for writ of certiorari in this case because the decision of the California Supreme Court is in accord with this Court's decisions in *Lemon, Amos* and *Smith* and does not conflict with its decisions in *Larkin* or *Kiryas Joel.*

The California Supreme Court noted the similarity between this case and *Amos, supra,* 483 U.S. 327. The question in *Amos* was whether an exemption of a religious organization's secular, nonprofit activities from Title VII of the Civil Rights Act of 1964's prohibition of employment discrimination on the basis of religion, 42 U.S.C. § 2000e et seq., violated the Establishment Clause. Using *Amos* as an example, the California Supreme Court applied the three-pronged test articulated in *Lemon* to determine whether AB 133 violates the Establishment Clause. The Court correctly found that AB 133 passed the *Lemon* test because it had the secular purpose of relieving religious entities of a potential burden on their free exercise rights, it neither advanced nor inhibited religion, and

it did not excessively entangle government with religion. Petitioners simply disagree with the application by the Court of the *Lemon* test, a disagreement which does not warrant the granting of the petition for writ of certiorari in this case.

1. A Religious Exemption Has a Secular Purpose Under the First Prong of the *Lemon* Test If a *Potential* Free Exercise Violation Is Present.

The California Supreme Court did not break new ground by applying the first prong of the *Lemon* test and finding that AB 133 did not violate the Establishment Clause because it had the secular purpose of relieving religious entities of a *potential* burden on the free exercise of religion. Courts in *legislatively-granted* exemption cases such as the case now before this Court speak in terms of avoiding *potential* free exercise burdens; only in *judicially-granted* exemption decisions do courts discuss whether an *actual substantial burden* is imposed on the free exercise right.[10]

For example, Justice Brennan's concurrence in *Amos, supra,* 483 U.S. at 343 discusses the "*prospect* of government intrusion." Justice Brennan's plurality opinion in *Texas Monthly v. Bullock,* 489 U.S. 1, 18, n. 8 (1988) described the exemption approved in *Amos* as preventing "*potentially* serious encroachments on protected religious

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[10] The California Supreme Court stated: "In this facial attack on sections 25373 and 37361, we have no evidence of the *actual* impact of any landmark preservation ordinance as applied to any property." *East Bay, supra,* 24 Cal.4th at 702-703 (emphasis added).

freedoms," and confirmed that its decision "in no way" signaled a departure from *Amos*. And *Walz v. Tax Comm'n.*, 397 U.S. 664, 673 (1970), discusses an attempt "to *guard against*" the dangers inherent in the imposition of property taxes on religious organizations. (Emphases added.)

The California Supreme Court properly examined the legislative history of AB 133, which documented *actual* substantial burdens which historic designation had placed on the free exercise rights of religiously-affiliated organizations whose churches required costly seismic retrofits for which government funds were not available. It also examined the possible one-year delay in a religious organization's proposed change of use of its property and the misdemeanor penalties for violations provided for in San Francisco's historic preservation ordinance, which the Court considered to be a typical example of a local historic preservation ordinance. *East Bay, supra*, 24 Cal.4th at 703-704 and 711, n. 5. It used this information to conclude that the Legislature could have reasonably believed that the restrictions accompanying designation as an historical landmark might burden the ability of a religious entity to carry out its religious mission.[11]

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[11] The Court also considered examples of other state cases where courts have held that the actual application of historic preservation statutes to churches had substantially burdened their free exercise and free speech rights, and in one case, their right to be free from an unconstitutional taking of their property. *See, e.g., First Covenant Church of Seattle v. City of Seattle*, 120 Wash.2d 238, 840 P.2d 174 (Supr. Ct. of Wash. 1992); *Society of Jesus of New England v. Boston Landmarks Commission*, 409 Mass. 38, 564 N.E.2d 571, 573 (Supr. Jud. Ct. of Mass. 1990);

And the California Supreme Court correctly relied on this Court's decisions in *Amos*[12] and *Walz*[13] to conclude that, between the intrusion prohibited by the Free Exercise Clause and the assistance prohibited by the Establishment Clause, the State must have room to maneuver when it legislatively exempts the noncommercial property of religiously-affiliated organizations from historic preservation ordinances. *East Bay, supra,* 24 Cal.4th at 711.[14]

First United Methodist v. Hearing Examiner, 129 Wash. 21, 916 P.2d 374, 380-381 (Supr. Ct. of Wash., en banc, 1996); *Munns v. Martin,* 631 Wash.2d 192, 930 P.2d 318 (Supr. Ct. of Wash., en banc 1997); *Keeler v. Mayor & City Council of Cumberland,* 940 F.Supp. 879, 880 (D. Md. 1996); *see also* A. Weinstein, *The Myth of Ministry vs. Mortar: A Legal and Policy Analysis of Landmark Designation of Religious Institutions,* 65 Temp. L. Rev. 91, 157 (Spring 1992).

Moreover, by allowing the religiously-affiliated organization to claim an exemption from a historic preservation ordinance as to any noncommercial property to which application of the ordinance might hinder the organization in carrying out its religious mission, AB 133 lifts from it the burden of demonstrating that a particular nonprofit activity is religious. This could also be an *actual burden* on a religiously-affiliated organization which is removed by AB 133. *See* Justice O'Connor's concurrence in *Amos, supra,* 483 U.S. at 348-349.

[12] *Amos, supra,* 483 U.S. at 334.

[13] *Walz, supra,* 397 U.S. at 673.

[14] *See, e.g., Justice O'Connor's concurrence in Smith, supra,* 494 U.S. at 906, recognizing that states and the federal government could grant a religious exemption from criminal laws against the use of peyote, even though they were not required to do so by the First Amendment; the plurality opinion in *Bowen v. Roy,* 476 U.S. 693, 712, n. 19 (1986), rejecting a free exercise challenge to the requirement of a social security number to obtain food stamps, but noting that Congress could validly adopt such an

In *Amos*, this Court held that a *blanket* exemption for religiously-affiliated organizations from the religious discrimination aspects of Title VII did not violate the Establishment Clause. Citing this as an example, the California Supreme Court properly concluded that an *optional* exemption that encourages the maintenance of landmark status whenever possible was not constitutionally defective. *Id.* at 712. (Indeed, churches are in the forefront of protecting their own historically significant buildings. *See* Clerk's Transcript below at p. 1304.)

In upholding AB 133, the California Supreme Court did not deviate in any way from this Court's holding in *Amos*. Accordingly, the California Supreme Court's application of the first prong of the *Lemon* test does not warrant review by this Court.

2. A Religious Exemption Passes the Second Prong of the *Lemon* Test Even If Its Benefits Are Extended Only to Religious Entities.

Nor does the California Supreme Court's application of the second prong of the *Lemon* test warrant review. Specifically, the California Supreme Court found that AB 133 passed the second prong of the *Lemon* test because it did not impermissibly endorse religion, even though it extended its benefits only to religious entities.

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exemption; and see 26 U.S.C. § 3127, an exemption for employers and employees where both are members of religious faiths opposed to participation in Social Security programs, enacted by Congress in response to *United States v. Lee*, 455 U.S. 252 (1982), holding that Congress was not required under the Free Exercise Clause to grant such religious exemptions.

Again, this Court's decision in *Amos* provides ample support for the principle that where government acts with the proper purpose of lifting a regulation that may burden the exercise of religion, the exemption does not need to come packaged with benefits to secular entities. *Amos, supra,* 483 U.S. at 338; *see also Gillette v. United States,* 401 U.S. 437 (1970), upholding a religious exemption from serving in the military for anyone religiously opposed to all wars. There are also numerous federal statutes, besides the one at issue in *Amos,* which provide exemptions only to religious entities.[15]

Petitioners argue that a religiously-affiliated organization may economically benefit from its exemption from historic preservation ordinances where application of such ordinances would cause a substantial hardship likely to deprive the organization of the economic return on its property in the furtherance of its religious mission.[16] However, as this Court has recognized, a law is not unconstitutional simply because it assists a

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[15] See, e.g., 29 U.S.C. § 169 (religious exemption from obligation to join labor organization); 8 U.S.C. § 1448 (religious exemption from requirement for naturalization oath); 10 U.S.C. § 312 (religious exemption from combat duty in militia); 7 U.S.C. § 1906 (religious exemption for ritual slaughter of animals).

[16] The substantial hardship requirement contrasts with the *incidental burden* on the exercise of religion described by Justice Kennedy in his majority opinion in *City of Boerne v. Flores,* 521 U.S. 507, 535 (1997). This Court also recognized in *Jimmy Swaggart Ministries v. Board of Equalization,* 493 U.S. 378, 392 (1988) that an economic burden on a church could be substantial.

religiously-affiliated organization in advancing religion, which is its very purpose.[17]

For a law to have forbidden effects under *Lemon*, the government itself must have advanced religion through its own activities or influence and have the purpose of endorsing religion. *Amos, supra,* 483 U.S. at 337; *see also* Justice O'Connor's concurrence at 348. AB 133 only allows the government to step out of the way of religiously-affiliated organizations in the pursuit of their religious missions. As such, it does not violate the federal Establishment Clause under the second prong of the *Lemon* test. Instead, it exhibits the benevolent neutrality which this Court endorsed in *Walz, supra,* 397 U.S. at 669-670, which permits religious exercise to exist without sponsorship and without interference.

That part of the California Supreme Court decision upholding AB 133 against an Establishment Clause attack, even though its exemption only applied to religiously-affiliated organizations, is completely consistent with this Court's decision in *Amos*. Accordingly, the decision need not be reviewed by this Court.

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[17] Petitioners fault the California Supreme Court for upholding AB 133 under the second prong of the *Lemon* test in part because it did not economically impact other property owners, a conclusion with which they disagree. However, this observation by the Court was not necessary to its decision. This case did not involve a tax subsidy to a religious organization, as did this Court's decision in *Texas Monthly, supra,* 489 U.S. 1. AB 133 relieves religiously-affiliated organizations from free exercise burdens which are not experienced by non-religiously-affiliated organizations. This justifies the different treatment of the two types of entities.

B. The Decision Below Does Not Conflict With This Court's Decisions in *Larkin* and *Kiryas Joel*.

Nor should this Court grant review of this case on the grounds that it conflicts with the Court's decisions in *Larkin, supra,* 459 U.S. 116, and *Kiryas Joel, supra,* 512 U.S. 687. *Larkin* held that a statute which gave churches veto power over nearby liquor licenses was unconstitutional because the statute enmeshed churches in the exercise of substantial governmental powers, in violation of the federal Establishment Clause.

Larkin is distinguishable. AB 133 does not give a church veto power over a third party's activities; instead, it allows a church to assert constitutionally-based claims as to its *own* property, which it already has the power to assert under the federal and state Constitutions. The California Legislature, when it enacted AB 133, limited the power which it had previously granted to local governments and reconfirmed the powers that religiously-affiliated organizations already possessed pursuant to the Free Exercise, Free Speech and Takings Clauses of the federal and state Constitutions. Religiously-affiliated organizations, with or without the passage of AB 133, possess the power to challenge the application of historic preservation ordinances to them under the federal and state Constitutions. The only change effected by AB 133 was a modification in the way in which the challenge is to be raised. Instead of the burden being placed on religiously-affiliated organizations to contest the application of the ordinances to them on these grounds, the burden of filing a lawsuit is now placed on those who object to the

election of the organization to exercise the opt-out mechanism provided for in AB 133. A court will still be able to review the religiously-affiliated organization's decision to make use of the opt-out provision.[18] Nor does this case conflict with this Court's decision in *Kiryas Joel, supra,* 512 U.S. 687. In that case, this Court struck down a New York statute on the grounds that it conferred upon a Satmar Hasidic community the powers of a local school district. In *Kiryas Joel,* there was an actual delegation of power to a religiously-affiliated organization. As the California Supreme Court noted in its opinion below, in contrast, AB 133 merely permits a religiously-affiliated organization to continue using its property in the manner in which it would have but for the historic preservation designation. *East Bay, supra,* 24 Cal.4th at 715.

Because the decision below is consistent with this Court's decisions in both *Larkin* and *Kiryas Joel,* the purported conflict relied upon by Petitioners does not warrant the granting of the petition for writ of certiorari. The California Supreme Court properly concluded that AB 133 passed constitutional muster under the third prong of the *Lemon* test because it did not excessively entangle government with religion.

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[18] AB 133 by its terms merely prevents local governments from overriding this opt-out without going to court. Cal. Govt. Code, §§ 25373(e) and 37361(e). The statute could not preclude judicial review or it would have violated article VI, section 1 of the California Constitution, which provides that the judicial power of the state is vested in the courts. This Court must interpret a statute in such a way as to avoid constitutional difficulties. *Frisby v. Schultz,* 487 U.S. 474, 483 (1988).

C. This Court Has Already Denied Petitions for Writ of Certiorari in Two Very Similar Religious Exemption Cases.

An additional reason why this Court should not grant the petition for writ of certiorari in this case is that this Court has recently denied petitions for writ of certiorari in two very similar cases involving legislative accommodation of religious free exercise, *Boyajian, supra,* 121 S.Ct. 759, and *Renzi, supra,* 121 S.Ct. 1192. As noted earlier, the California Supreme Court specifically relied on the reasoning in the *Renzi* case in deciding the case below. The petitioners in these two cases raised arguments similar to those made by Petitioners in this case as to why this Court should grant their petitions. Having found their arguments to be unpersuasive, this Court should find Petitioners' arguments unpersuasive as well.

II.

CERTIORARI IS NOT NEEDED BECAUSE THERE IS NO CONFLICT IN THE CIRCUITS OR WITH OTHER STATE COURTS OF LAST RESORT AS TO WHETHER A LAND-USE STATUTE EXEMPTING RELIGIOUSLY-AFFILIATED ORGANIZATIONS VIOLATES THE FEDERAL ESTABLISHMENT CLAUSE.

One purpose in granting a petition for writ of certiorari is to resolve conflicting decisions among the circuit courts or between circuit courts and state courts of last resort. There is no such conflict here. All of the circuit courts which have addressed the issue of whether a religious exemption from certain aspects of land use regulation violates the federal Establishment Clause have

answered that question in the negative. These cases are consistent with the California Supreme Court's decision below. *See, e.g.*, the First Circuit's opinion in *Boyajian, supra,* 212 F.3d 1; the Fourth Circuit's opinion in *Renzi, supra,* 224 F.3d 283; and the Seventh Circuit's opinion in *Cohen v. City of Des Plaines,* 8 F.3d 484 (7th Cir. 1993) (upholding an ordinance that exempted religious day care centers from having to obtain a special use permit to locate in a residential area). Consequently, the petition for writ of certiorari in this case should be denied.

III.

CERTIORARI IS NOT NEEDED TO OBTAIN THIS COURT'S DIRECTION BEFORE OTHER STATES FOLLOW AB 133 AS A MODEL FOR EXEMPTING RELIGIOUS ORGANIZATIONS FROM ANY FORM OF LAND USE REGULATION.

AB 133 is an appropriate model for historic preservation legislation because it does not violate the federal Establishment Clause, for the reasons mentioned above. Therefore, it is not necessary to grant the petition for writ of certiorari in this case to obtain this Court's direction before other states follow AB 133 as a model for exempting religious organizations from land use regulations which can potentially burden their free exercise rights.

CONCLUSION

None of the grounds for granting a petition for writ of certiorari have been established by Petitioners. The opinion of the California Supreme Court holding that the

religious exemption provided from historic preservation ordinances by AB 133 does not violate the federal Establishment Clause is well supported by this Court's decisions. There is no conflict in any of the circuits or among state courts of last resort on this issue. This Court has recently denied petitions for writ of certiorari in two remarkably similar cases. Finally, AB 133 is an appropriate model for a statute exempting religiously-affiliated organizations from land use ordinances which potentially burden their free exercise rights, since it does not violate the Establishment Clause. For all of the above reasons, the petition for writ of certiorari in this case should be denied.

Dated: April 2, 2001

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